AlwinPro / AlwinPro Care / Anna4 / TwoInOne License Agreement (07/2010)

Sec 1 Right of utilization

(1) Aurenz hereby grants the Licensee the single, non-exclusive right to use the software program(s) “AlwinPro,” “AlwinPro Care,” “Anna4” or “TwoInOne” (“Software”). The program is saved on a data storage medium, in machine-readable form (object code), as is the application documentation, and is intended for personal use within a business. The right of utilization is limited to simultaneous use at the number of Licensee’s work stations, as agreed upon between the Licensee and Aurenz.

Depending on the type of license, Aurenz either grants the right, which is not subject to time restrictions, to use the Software as described in section 1 paragraph 1 (unlimited). Alternatively, the license can limit the right to use the Software as described in section 1 paragraph 1 to one year at a time (limited).

The Software and the application documentation will be referred to as “License Material” in the following. The License Material includes all versions of the license material that have been given to the Licensee during the term of the contract. This also applies to upgrades and updates provided and as long as the Licensee has also signed a separate, fee-based maintenance and/or support contract.

(2) The granting of the aforementioned right of utilization to the Licensee does not include the acquisition of any further rights to the Software to the Licensee, unless otherwise expressly stipulated in the following provisions. Aurenz retains all rights to distribute, exhibit, demonstrate and publish the Software.

Sec 2 Scope of Use

(1) “Use,” in terms of section 1 paragraph 1, refers to every permanent or temporary, entire or partial duplication (copying) by loading, showing, running, transferring or saving of the programs and data for executing the programs. Use includes executing said actions in order to monitor, examine or test the programs received. The previous statements also apply to the application documentation on the data storage medium received. The right of utilization is limited to the object code of the Software.

(2) If the Licensee uses the Software at multiple work stations connected within a network, the authorization according to section 1 paragraph 1 and section 2 paragraph 1 is extended to the number of work stations in the local network, for which the license was given. If the installation of a client program is necessary to use the network at the respective work station, the Licensee is allowed to create duplicates of the client program to match the number of given licenses.

(3) Printed License Material may only be duplicated with written consent from Aurenz.

(4) Part of the use defined in the License Agreement includes the creation of backup copies of the Software and the data included within, provided that this is necessary for future use of the Software, the data or the entire system. If the Software is copy-protected, the Licensee will receive a replacement copy, when requested and at short notice, should the program received be damaged during loading or during operation thereof.

(5) The Licensee is authorized to connect the Software with other computer programs.

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Additional changes to the Software as well as defect correction are only permissible to the extent that they are necessary for the use of the program according to this License Agreement. A retranslation (decompilation) of the program code in another display format is prohibited.
Exempt from this is a partial translation for the purpose of enabling the interoperability of an independently created computer program with the Software, or with other software programs, with respect to the limitations set forth in section 69e of the German Copyright Act (UrhG).

(6) The Licensee is not authorized to transfer the rights mentioned in the paragraphs above to third parties, nor can the right of utilization be transferred to third parties. Companies connected to the Licensee in terms of sections 15 and following of the German Corporation Law (AktG) are not considered third parties as defined in the previous statement.

(7) A right to use the Software is only granted insofar as the following regulations (especially the license terms of the individual programs and libraries) do not state otherwise.

Sec 3 Warranty and Liability

(1) The Licensee knows and understands that even with state of the art technology it is not possible to create software that necessarily works in all applications and in combination with other software products without any defects. Program defects can therefore not be completely excluded.

(2) Any warranty claims based on defects require that the Licensee complies with the requirement to inspect and file a complaint according to the regulations set forth in section 377 of the German Commercial Code (§ 377 HGB).

(3) As long as there is no negligible defect in the License Material, Aurenz has the right to choose whether to correct the defect or to deliver new, defect-free goods. Should one or both of these types of supplementary performance be impossible or disproportionate, Aurenz has the right to refuse them.
Aurenz has the right, in the scope of the warranty obligations to repair or exchange defective hardware and software up to two times. To the extent necessary, the Licensee will remove all software programs, changes and additions before the exchange takes place. The Licensee will grant Aurenz the necessary time and opportunity for the supplementary performance.

(4) It is not a defect if the Software is not compatible with software components of other manufacturers, as long as nothing stating the contrary has been agreed upon with Aurenz in written form. The Licensee knows that the Software can be copy-protected by a so-called dongle.

(5) The reports and statistics created with help of the Software are based on the connection data transferred from the data source. It has been found that in tests, certain data sources delivered insufficient data material. This can especially be caused when data sources not approved by Aurenz are in use, or through technical changes of the data source (e.g. release change, hardware exchange).
The Aurenz GmbH does not assume liability that the connection data, which is transmitted from the Licensee's data source, is complete, correct or up-to-date. Detailed information regarding the different data sources can be requested from Tel. +49 (0) 7022 93355-88 or support@aurenz.de.

Aurenz is not liable for damages to the Licensee or third parties, irregardless what type, caused by insufficient data material. All such liabilities are excluded. This does not apply if the damage is due to a deliberate or grossly negligent breach of duty by Aurenz or a deliberate or grossly negligent breach of duty by a legal representative or vicarious agents.

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(6) Should the supplementary performance mentioned in para. (3) be impossible or fail, the Licensee has the right to choose to have the purchase price reduced (reduction) or to withdraw from the contract in accordance with legal regulations (withdrawal). For a marginal breach of contract, especially for negligible defects, the Licensee does not have the right to withdraw. Should the Licensee choose to withdraw from the contract due to defects in title or material defects after failed supplementary performance, there is no additional compensation for damages concerning this defect.

(7) Licensee claims to necessary expenses, especially transportation, shipping and handling, work and material costs incurred for supplementary performance purposes are excluded as far as the expenses increase because the goods delivered by Aurenz were later brought to a place other than the place of fulfillment.

(8) Aurenz shall have unrestricted liability for defects in title and for the absence of agreed guarantees for the condition of the item ("Beschaffenheitsgarantie" in the meaning of § 443 German Civil Code).

(9) Aurenz shall have liability for the Licensee's compensation for damages claims that are based on deliberate or gross negligence by Aurenz, or deliberate and gross negligence by its legal representatives and vicarious agents, in accordance with legal regulations. If Aurenz has culpably breached a substantial contractual duty, Aurenz is also liable according to the legal regulations. If the violation of duty refers to a duty, where the Licensee expected fulfillment and where the Licensee could expect fulfillment, this constitutes a substantial contractual duty.

(10) Aurenz's liability for compensation for damages per paragraph (9) is restricted to the damage typical of this type of contract ("vertragstypischer Schaden") to the extent that it was foreseeable at the time of the formation of the contract. The liability for compensation for damages is limited, in every case, to five times the respective contract price for the received Software product.

(11) Aurenz may not be held liable in the event of a breach of obligation due to minor negligence, inasmuch as this does not involve losses attributable to Aurenz as a result of loss of life, limb of health or breach of a substantial contractual duty. For breaches of substantial contractual duties the liability is restricted according to paragraph (10).

(12) Aurenz is not liable for direct, indirect or consequential damages not caused by the Software product, but due to other computer system or data source errors. This especially applies to data loss and loss of profit as a result of said errors. The same applies to damages based on erroneous, improper use of the Software product or unauthorized program changes that can be traced back to the Licensee, as well as ignoring or acting against the notes and recommendations in the User's Manual. The Licensee bears the burden of proof that damages were not caused by erroneous, improper use of the Software product, unauthorized program changes that can be traced back to him and that the Licensee did not act against the notes and recommendations in the User's Manual. Furthermore, Aurenz is not liable for depreciation, incorrect or careless use, unsuitable equipment, chemical, electrochemical or electric influences (as long as Aurenz is not liable for it), inappropriate, and without prior approval by Aurenz, changes or repair work carried out by the Licensee or a third party.

(13) The Licensee has to prepare a data backup before installation of a Software product received from Aurenz. In addition, the Licensee is responsible for continual data backup, with regard to the risk of loss, after the installation. A data backup has to be performed before installing updates and upgrades and before executing maintenance work. Aurenz is not liable for damages that can be caused by a lack of suitable data backups.
The liability of Aurenz in case of data loss is restricted to the reimbursement of typical recovery costs that would have arisen in the case of regular data backups, with regard to the risk of loss.

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(14) The liability of Aurenz for culpable damages to life, body and health remains untouched. This also applies for the mandatory liability in accordance with the German Product Liability Act.

(15) Claims for manufacturer recourse remain untouched.

(16) Unless otherwise stated above, Aurenz is excluded from any liability.

(17) The warranty period is one year, starting with delivery of the product.

(18) The paragraphs above also respectively apply to updates and upgrades as well as defects and damages that occur during the download and subsequent installation of Aurenz Software programs.

(19) Services and performances from Aurenz in connection with warranty (e.g. making patches, updates, releases, upgrades, etc. available) neither lead to an extension nor to a new start of the warranty period.

Sec 4 Joint Liability

(1) More extensive liability for compensation for damages than provided in section 3 – without consideration of the legal nature of the claims filed for – is excluded. This especially applies to claims for compensation for damages resulting from culpable infringement at the time of signing the contract ("Verschulden bei Vertragsabschluss"), to other breach of duties or to tort claims for compensation of material damages according to paragraph 823 of the German Civil Code (§ 823 BGB).

(2) The restriction as stated in paragraph (1) is also valid should the Licensee claim compensation of futile expenses instead of compensation for damages instead of completion of services.

(3) Insofar as the liability of Aurenz regarding compensation for damages is excluded or restricted, this also applies to the personal compensation for damages liability of the employees, colleagues, associates, legal representatives and vicarious agents.

Sec 5 Protection of the License Material; Transfer

(1) Notwithstanding the Licensee's granted right of utilization, Aurenz retains all rights to the License Material including all copies or partial copies thereof made by the Licensee. The Licensee's property of data storage mediums, data memory or other hardware remains untouched.

(2) The Licensee is obligated to leave the notice of protected rights, including copyright notes and other rights reserved untouched. The Licensee is also obligated to include them in any complete or partial copies of the License Material in an unaltered state.

(3) The Licensee is not permitted to rent out the Software and the application documentation for monetary gain.

(4) Furthermore, the Licensee is only authorized to transfer the Software and the application documentation if

a) the installed Software and all data records saved to a hard drive or backup copies have been deleted;

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b) the recipient has agreed, in written form, to the contents and validity of this License Agreement;

c) the written consent is sent to Aurenz and

d) the Licensee has passed on the Software and the application documentation to the recipient without retaining any copies.

Sec 6 Termination

(1) The contract is valid for an indefinite period of time.

(2) The rights of the Licensee to use the Software and the application documentation are terminated if the Licensee violates any terms set forth in this contract. This occurs if the customer violates the rights of utilization as stated in section 2, or the terms stated in section 5 paragraphs 3 and 4.

(3) In the case of section 2 the Licensee is obliged to return the original Software and all copies of the data storage media, as well as to delete all files created on the computer to the extent that they cannot be restored.

(4) The authorized use of the Software and the application documentation is the requirement set forth for the rights of utilization in this License Agreement. If the Licensee violates these terms, the rights of utilization are immediately revoked, without the need for termination.

Sec 7 Applicable Law

This contract is solely subject to the laws in the Federal Republic of Germany. If this Law refers to a foreign legal system, such references are legally ineffective. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is specifically excluded.

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